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8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 In Re:  
12 EXIGEN (USA), INC.  
13 Debtor.

Case No. 13-32281-DM-11

Chapter 11

**DECLARATION OF KYLE EVERETT  
IN ACCORDANCE WITH FEDERAL  
RULES OF BANKRUPTCY  
PROCEDURE SECTION 2007.1(c)**

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18 I, Kyle Everett, declare as follows:

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20 1. I am a Vice President at Development Specialists, Inc. ("DSI"), a financial and  
21 management consulting firm with offices in San Francisco, Chicago, New York and a number of  
22 other major American cities. DSI is experienced in all aspects of insolvency and bankruptcy  
23 consulting and members of DSI regularly serve in fiduciary capacities including as Chapter 11 and  
24 Chapter 7 Trustees, Court-Appointed Examiners, Post-Confirmation Trustees, federal Equity and  
25 state court appointed Receivers, as well as act as consultants to debtors, creditors, creditors'  
26 committees and the above referenced fiduciaries. I submit this declaration in connection with the  
27 United States Trustee's consideration to appoint me as Chapter 11 Trustee in the above titled case.  
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1 I have personal knowledge of all of the matters set forth herein and, if called as a witness, would  
2 competently testify thereto.  
3

4 2. In the past two years, I have been appointed as a Chapter 11 Trustee as well as a  
5 Chapter 7 Trustee and both cases remain active. Currently I am the Chapter 11 Trustee for Pacific  
6 Thomas Corporation Case No. 12-46534 MEH, Oakland Division, and am the Chapter 7 Trustee  
7 for Tally One, Inc. Case No. 11-31985 DM, San Francisco Division.  
8

9 3. My current hourly rate is \$550 effective January 1, 2014, which may be adjusted  
10 annually on January 1 of each successive year. In connection with this matter, I would consider  
11 utilizing a discounted rate of \$450. If appointed, I anticipate hiring DSI to assist me with certain  
12 tasks such as required periodic reporting, preparation of internal bookkeeping and accounting,  
13 review of records and certain analyses. I would make an appropriate application for such  
14 employment under Section 327 of the Bankruptcy Code and would request that, if approved,  
15 DSI's fees shall be included as part of and within the limits of the general statutory limits that I  
16 would seek as Trustee, pursuant to Section 326(a) of the Bankruptcy Code. Depending upon the  
17 availability of staffing at the time and the specific tasks to be performed, it would currently be my  
18 intent to utilize Tyler Julian in DSI's San Francisco office whose 2014 hourly rate is \$210. If any  
19 future rate adjustments occur for any DSI personnel, myself included, I will file and serve notice  
20 of such adjustments on the parties in this matter.  
21

22 4. I understand that, should I be appointed, my compensation and reimbursement of  
23 any expenses incurred will be subject to Court approval after providing an application for such  
24 compensation. Such application will be made in adherence to the Bankruptcy Code, the Court's  
25 Local Rules and the Guidelines set forth by the United States Trustee.  
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1           5.       I also understand and acknowledge that, should I be appointed, I will comply with  
2 all United States Trustee guidelines, the Chapter 11 Handbook and other guidance including  
3 cooperation and providing information to the United States Trustee's office including periodic  
4 reports as required or requested.  
5

6           6.       To the best of my knowledge, information and belief, I and DSI are disinterested  
7 within the meaning of 11 U.S.C. Section 101(14) and do not represent any entity having an  
8 adverse interest in connection with the above case, nor do I or DSI have any adverse interest in  
9 this matter. Neither I nor DSI are a prepetition creditor, equity security holder or an insider of the  
10 debtor. Neither DSI, nor any employee at DSI, is or has ever been a director, officer or employee  
11 of the debtor at any time. Further, I have reviewed the schedules and statements filed by the  
12 debtor in this case as well as records maintained by DSI and after such review and reasonable  
13 inquiry, have determined that neither I, nor DSI have any connections with the parties in interest in  
14 this case including the debtor, its principals, the creditors, their professionals, the United States  
15 Trustee or any person employed by the United States Trustee.  
16

17           7.       Across the country in many instances, at any given time, members of DSI are  
18 acting as consultants for bankruptcy constituencies and as fiduciaries in federal and state court  
19 matters as well as out of court circumstances. In many of those matters, certain creditors in those  
20 matters are creditors in the instant case, such as the federal and state taxing authorities as well as  
21 common creditors such as T-Mobile and Iron Mountain. Depending on DSI's role in those other  
22 cases, DSI may be viewed as working indirectly for such creditors, but if required by my duties  
23 and responsibilities as a Chapter 11 Trustee in this matter, I have no concerns being adverse to  
24 such creditors.  
25

26           8.       Additionally, because of the nature of the insolvency business and its structure,  
27 relationships between DSI and many of the professional firms that are involved in this matter,  
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1 either representing parties in interest or as creditors, may have existed in past years or may exist in  
2 future matters. Any such contacts or relationships do not relate to this bankruptcy case and thus  
3 do not create any conflicts with respect to my potential appointment as Chapter 11 Trustee in this  
4 matter.

5  
6 9. I do not believe that any of the above connections render DSI not "disinterested"  
7 within the meaning of 11 U.S.C. Sections 101(14), 327 and 328. To the extent that any disclosure  
8 herein requires modification upon any further analysis or as additional information becomes  
9 available, I will file one or more supplemental declarations with the Court.

10  
11 10. Based on a review of many of the pleadings filed in this case, which have provided  
12 me with insight as to the nature of the issues that I would be dealing with if I were appointed as  
13 the Chapter 11 Trustee in this case, and after a review of the experience in the industries at issue,  
14 my choice of counsel would be Debra Grassgreen of Pachulski, Stang, Ziehl & Jones, LLP ("the  
15 Firm") for a number of reasons. Ms. Grassgreen and others in the Firm have a significant depth of  
16 representation in the music industry representing Trustees, creditors' committees and debtors  
17 including record labels and entertainers. Additionally, she and others in the Firm, have experience  
18 in representing software developers and both debtors as well as acquirers of high-technology and  
19 telecommunication companies. Lastly, she and others in the Firm have extensive experience in  
20 fraudulent conveyance litigation and, importantly, have indicated that they are open to considering  
21 creative fee arrangements as well as the possibility of a contingent fee arrangement. Given the  
22 benefits associated with such experience, I believe that hiring their firm will assist me, if  
23 appointed, with managing this case in an efficient and cost effective manner and understand that  
24 employment of counsel or any professional governed by Bankruptcy Code Section 327 is subject  
25 to Court approval.

1 I declare under penalty of perjury that the foregoing is true and correct. Executed on  
2 January 22, 2014 at San Francisco, California.  
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5 KYLE EVERETT  
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